

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

VICKY BERBERICH
Claimant

VS.

SPECIAL EDUCATION COOPERATIVE
Respondent

AND

KANSAS ASSOC. OF SCHOOL BOARDS
WC FUND, INC.
Insurance Carrier

Docket No. 1,020,191

ORDER

Claimant requests review of the July 28, 2005 preliminary hearing Order entered by Administrative Law Judge (ALJ) Kenneth J. Hursh.

ISSUES

The ALJ denied claimant's request for medical treatment as he concluded she did not suffer an aggravation or acceleration of her neck and upper extremity symptoms arising out of her employment with respondent.

The claimant appealed this finding alleging "the conservative ruling of Administrative Law Judge Hursh" was wrong.¹ While claimant filed a separate claim for an injury to her right arm and neck,² she now maintains her uncontroverted testimony establishes that she has had increased symptoms in both extremities and her neck while at work for the date

¹ Claimant's Brief at 1 (filed Aug. 25, 2005). Emphasis in original.

² That claim is the subject of Docket No. 1,003,648 and an appeal of the ALJ's Award was reviewed and decided by the Board on February 20, 2004.

of accident alleged in this claim. Thus, she contends she is entitled to the medical treatment outlined by Dr. Prostin in this docketed claim.

Conversely, respondent adamantly maintains that to the extent claimant has any need for treatment, that need is not attributable to her work activities as a para professional in respondent's school district.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The ALJ succinctly set forth the pertinent facts in his preliminary hearing order and the Board adopts those as its own.

After reviewing the evidence proffered by the parties, the ALJ made the following conclusions:

The claimant's job with the respondent is not what one would consider at all physically demanding. The claimant uses her upper extremities in passing out and checking worksheets, but the physical effort is minimal. There is nothing in the nature of the claimant's job that requires her to bend her head forward while checking papers. The claimant does not engage in work activities that are any more demanding, or even as demanding as day to day living. It is intellectual, rather than physical, job. It is also noted that the claimant's prior injury resulted from physical trauma when she was restraining an autistic child.³

He went on to find as follows:

It is held that the claimant did not suffer an aggravation or acceleration of her neck and upper extremity symptoms arising out of her employment with the respondent. It appears most likely that the present need for treatment is due to natural progression of the previous work injury. There is nothing in the record to suggest any traumatic injury since the previous work injury.⁴

The Board has considered the evidence and finds the ALJ's preliminary hearing Order should not be disturbed. The medical testimony on the issue of causation is less than persuasive. Dr. Stein steadfastly believes claimant's job did not cause her present carpal tunnel complaints. He also believes her neck complaints are solely attributable to a degenerative condition and not to any of claimant's work activities. Dr. Prostin seemed

³ ALJ Order (July 28, 2005) at 2.

⁴ *Id.*

to assume claimant's present job was highly repetitious in that she was compelled to grade a large number of papers. However, claimant's testimony suggests that it is not. Rather it appears claimant may be suffering from a deterioration of the condition encompassed within her earlier claim, a claim which affords her the right to additional medical benefits.

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Kenneth J. Hursh dated July 28, 2005, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of September, 2005.

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Anton C. Andersen, Attorney for Respondent and its Insurance Carrier
Kenneth J. Hursh, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director